COPY

Supreme Court, U.S.
FILED
JUN 8 1969
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1968 1969

No. 68-55

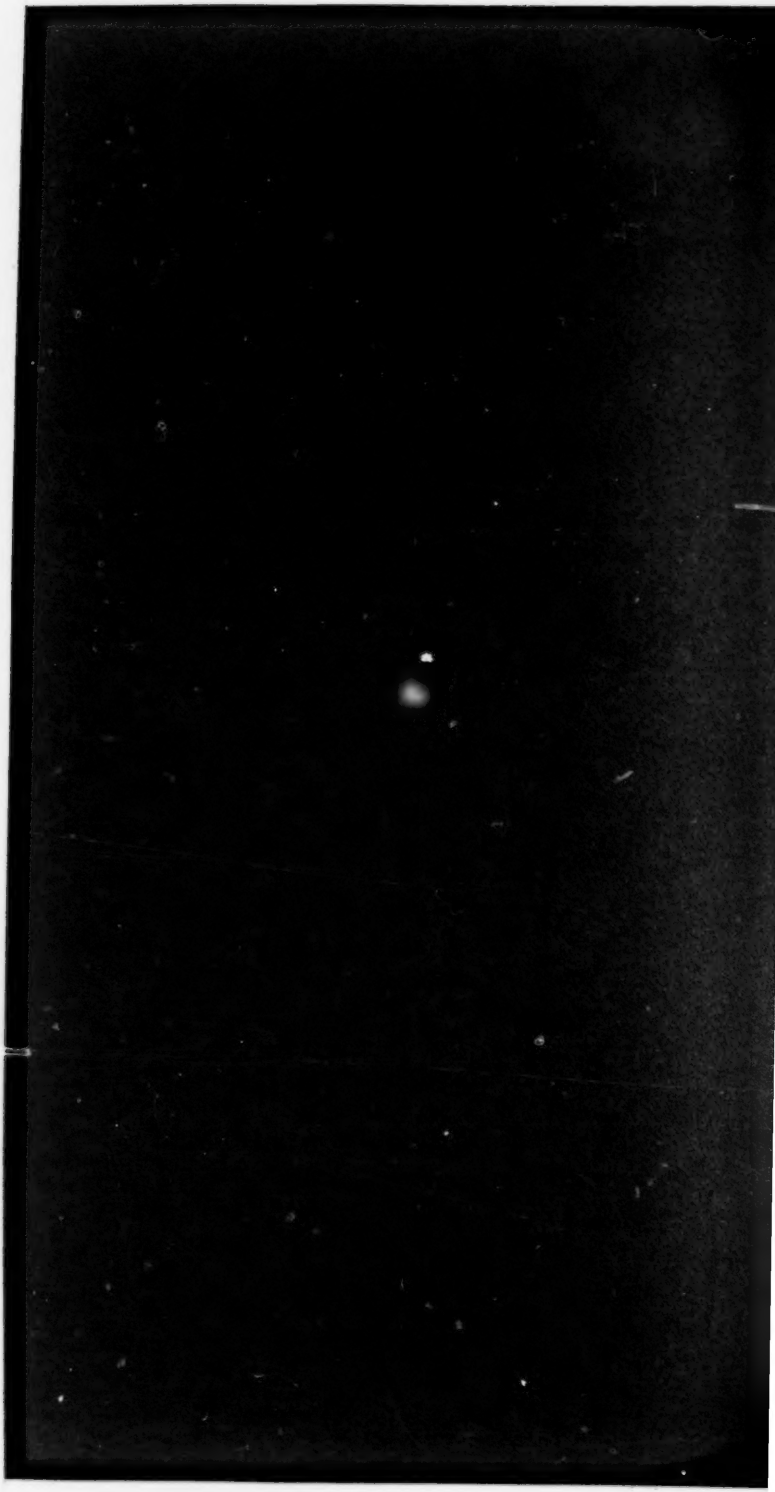
WILLIE WARE, JR., PETITIONER,

v.

GEORGE K. WILSON, WARDEN, ET AL.,
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED JUNE 11, 1968
CERTIORARI GRANTED NOVEMBER 25, 1968



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 1084

WILLIE WADE, JR., PETITIONER,

vs.

LAWRENCE E. WILSON, WARDEN, ET AL., RESPONDENTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

INDEX

	Page
Order permitting action to be filed in forma pauperis	1
Petition for writ of habeas corpus (form supplied by United States District Court, Northern District of California)	3
Petition for writ of habeas corpus (form prepared by petitioner)	10
Exhibit A—Letter from petitioner's former appellate counsel	18
Exhibit B—Motion for transcript filed with California District Court of Appeal, Second Appellate District	19
Exhibit C—Response from Clerk of California District Court of Appeal, Second Appellate District	22
Exhibit D—Petition for writ of habeas corpus to California Supreme Court	23
Exhibit E—Response from Clerk of California Supreme Court	27
Exhibit F—Request to California District Court of Appeal, Second Appellate District for information as to availability of transcript and response	28
Exhibit G—Response of Clerk of Superior Court of Los Angeles County as to availability of transcript	29

	Page
Order to show cause	31
Return to order to show cause	32
Motion to stay proceedings	39
Traverse in opposition to return to order to show cause	40
Order granting petition for writ of habeas corpus	44
Notice of appeal	46
Order staying execution of judgment pending appeal	47
Petition for certificate of probable cause	48
Certificate of probable cause	49
Opinion of United States Court of Appeals for the Ninth Circuit	50
Order denying petition for rehearing	54
Order granting motion for leave to proceed in forma pauperis and granting petition for writ of certiorari	55

[a] Docket Entries

November 30, 1966—Petition for habeas corpus delivered to United States District Court.

February 16, 1967 —Order issued allowing petitioner to file petition for habeas corpus in forma pauperis.

February 16, 1967 —Petition for habeas corpus filed with United States District Court.

February 16, 1967 —Order to show cause issued returnable February 24, 1967.

February 24, 1967 —Return to order to show cause filed.

March 6, 1967 —Order after hearing respondent, case continued to March 13, 1967, for further hearing on order to show cause.

March 8, 1967 —Motion of petitioner to stay proceedings filed.

March 22, 1967 —Traverse filed by petitioner to return to order to show cause.

June 5, 1967 —Order issued granting petition for writ of habeas corpus.

[b]

June 15, 1967 —Notice of appeal filed by respondent.

June 15, 1967 —Order issued staying execution of judgment pending appeal.

June 15, 1967 —Petition filed by respondent for certificate of probable cause.

June 15, 1967 —Certificate of probable cause issued.

March 11, 1968 —Decision of United States Court of Appeals for Ninth Circuit announced.

May 3, 1968 —Petitioner's petition for rehearing denied by United States Court of Appeals for Ninth Circuit.

[1] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Civil No. 46568

WILLIE WADE, JR., A-38671A, Plaintiff (Petitioner)

v.

LAWRENCE E. WILSON, WARDEN, and PEOPLE OF THE STATE OF CALIFORNIA, et al., Defendant (Respondent)

ORDER PERMITTING ACTION TO BE FILED IN FORMA PAUPERIS—February 15, 1967

Affidavit having been presented in compliance with the provisions of 28 U. S. C. 1915;

It is Ordered that the Clerk file said affidavit and the complaint or petition, without prepayment of the Clerk's filing fee, or the giving of security therefor.

It is Further Ordered that the question as to whether any further proceedings in this action may be taken at public expense, without prepayment of further fees and costs or giving security therefor, is hereby reserved for determination by a Judge of this Court.

It is Further Ordered that a copy of this order, together with a copy of the affidavit and complaint or petition filed pursuant hereto be served upon the defendant or respondent.

February 15, 1967.

Alfonso J. Zirpoli, United States District Judge.

[2] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

Case No. 46568

[Title omitted]

PETITION FOR WRIT OF HABEAS CORPUS—
Filed February 16, 1967

PERSONS IN STATE CUSTODY

Instructions—Read Carefully

In order for this petition to receive consideration by the District Court, it shall be in writing (legibly handwritten or typewritten), signed by the petitioner and verified (notarized), and it shall be set forth in concise form the answers to each applicable question. If necessary, petitioner may finish his answer to a particular question on the reverse side of the page or on an additional blank page. Petitioner shall make it clear to which question any such continued answer refers.

Since every petition for habeas corpus must be sworn to under oath any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Petitioners should therefore exercise care to assure that all answers are true and correct.

If the petition is taken in *forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that petitioner will be unable to pay the fees and costs of the habeas corpus proceedings. When the petition is completed, the *original and one copy* shall be mailed to the Clerk of the District Court for the Northern District of California, San Francisco, California.

[3] 1. Place of detention: San Quentin, State Prison.

2. Name and location of Court which imposed sentence: Superior Court of Los Angeles, California.

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) Murder in the First degree (p.c. 187).
(b)
(c)

4. The date upon which sentence was imposed and the terms of the sentence:

(a) November 1, 1960, Naterual life in prison.
(b)
(c)

5. Check whether a finding of guilty was made:

(a) after a plea of not guilty: A Finding of Guilty.
(b) after a plea of nolo contendre.
(c) after a plea of guilty.

6. If you were found guilty after a plea of not guilty, check whether that finding was made by:

(a) a jury Trial.
(b) a judge without a jury.

7. Did you appeal from the judgment of conviction or the imposition of sentence? Yes.

8. If you answered "yes" to (7), list:

(a) The name of each court to which you appealed:

I. District Court of Appeal 2d. app. Dist.
II. —.
III. —.

[4] (b) The result in each such court to which you appealed:

I. Judgement Affirmed.
II. —.
III. —.

(c) The date of each such result:

I. April 17, 1961.
II.
III.

(d) If known, citations of any written opinion or orders entered pursuant to such results:

I.

II.

III.

9. If you answered "no" to (7), state your reasons for not so appealing:

(a)

(b)

(c)

10. State concisely the grounds on which you base your allegations that you are being held in custody unlawfully:

(a) That i am being denied due process and Equal protection of the law by the State of California by the illegal retrainment of my Trial Records.

[5] (b)

(c)

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) The laws of California requires that an indigent person may recieve a free copy of a trial transcripts if he timely appeals, i complied with the law and timely appeal my conviction but could not recieve a free copy of the Records as an indigent person.

(b)

(c)

[6] 12. Prior to this petition have you filed with respect to this conviction:

(a) any petition in a State Court for relief from this conviction?

(b) any petitions in State or Federal Courts for habeas corpus? yes.

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.

(d) any other petitions, motions, or applications in this or any other court? yes.

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

I. May 27, 1966 motion and affidavid for the issuance of records.
II. July 21, 1966, petition for a writ of Habeas Corpus.
III. —.
IV. —.

(b) the name and location of the court in which each was filed:

I. District Court of appeal 2d. App. Dist.
II. Supreme Court of the State of California.
III. —.
IV. —.

(c) the disposition thereof:

I. Denied without fileing.
[7] II. Denied without opinion.
III. —.
IV. —.

(d) the date of each such disposition:

I. District Court of appeal, May 27, 1966.
II. Supreme Court of California, Aug 17, 1966.
III. —.
IV. —.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

I. —.
II. —.
III. —.
IV. —.

14. Has any ground set forth in (10) been previously presented to this or any other court, State or Federal, in any petition, motion, or application which you have filed? yes.

15. If you answered "yes" to (14), identify:

(a) which grounds have been previously presented:

I. Denial of due process and equal protection of the law by the illegal restrainment of my trial transcripts by the people of the State of California.

[8] (b) the proceedings in which each ground was raised:

I. Supreme Court of the State of California.
II. —.
III. —.
IV. —.

16. If any ground set forth in said (10) has not previously been presented to any court, State or Federal, set forth the ground and state consicely the reasons why such ground has not been previously presented:

(a) —.
(b) —.
(c) —.

[9] 17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes.
(b) your trial, if any? yes.
(c) your sentencing? yes.
(d) your appeal, if any, from the judgment of conviction of the imposition of sentence? yes.
(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? none.

18. If you answered "yes" to one or more of (17), list:

(a) the name and address of each attorney who represented you:

I. —.
II. —.
III. Burton Marks, 8447 Wilshire boulevard, Suits 217, Beverly Hill, Zipcode 90211.

(b) the proceedings at which each such attorney represented you:

I. —.
II. —.
III. —.

19. If you are seeking leave to proceed in *forma pauperis*, have you completed the sworn affidavit setting forth the required information (see instructions, page 1 of this form)? yes.

Willie Wade, Jr., Signature of Affiant.

[10] UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

STATE OF CALIFORNIA,
County of Marin, ss:

FORMA PAUPERIS AFFIDAVIT

I, Willie Wade, Jr., petitioner in the above entitled cause, am an indigent person, and a citizen of the United States, over the age of twenty-one (21) years; that he is unable to prepay the fee of, or to file a petition for a writ of habeas corpus; and papers in support thereof, or to hire counsel to prosecute said writ; that he is without funds, or anything of value with which to pay or secure the cost necessary to prosecute said petition and the proceedings in connection therewith; that affiant believes he has a good and just cause of action, and therefore prays that this Court permit him to proceed in the above-entitled cause without pre-paying the costs required by this Court in such cases, and that security for same be waived by virtue of his indigent circumstances.

I certify under penalty of perjury that the foregoing is true and correct.

Willie Wade, Jr., Signature of Petitioner, Affiant.

STATE OF CALIFORNIA,
County of Marin, ss:

VERIFICATION

, being first sworn under oath, presents that he has subscribed to the above and does state that the information therein is true and correct to the best of his knowledge and belief.

Willie Wade, Jr., Signature of Affiant.

Date: November 23, 1966.

Subscribed and sworn to before me this 23 day of Nov, 1966. Winton A. Gastmann, Notary Public in and for the County of Marin, State of California.

My Commission expires December 30, 1968, Winton A. Gastmann.

[11] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Civil No. —

[Title omitted]

PETITION FOR A WRIT OF HABEAS CORPUS

To: The Honorable Justice of the Above entitled Court and associates thereof,

Comes now, Willie Wade, Jr, hereafter referred to as petitioner, in this matter, who says: that I am a citizen of the United States over the age of 21 years and that I am being illegally restrained, deprived of my liberity by the People of the State of California, in the actual custody of Lawrence E. Wilson, warden, et., al., respondents.

Jurisdiction

This Honorable Court has Jurisdiction invoked under the power and authority of the Constitution of the United States and conferred by Title 28 of the United States Code, sections: 1915; 2241; 2242; 2243 and 2254, to hear and determine all the matters herein,

[12] Allegations

Petitioner alleges that he is being denied due process of law and equal protection of the law by the restrainment of his records by the People of the State of California et., al.

Statement of the Facts and Statement of Case

In the Superior Court of the State of California, County of Los Angeles, petitioner was convicted by a jury for the crime of Murder, in the first Degree, a violation of California penal code, section 187, and as a penality for the crime, the jury found the prescribed punishment to be death.

Wherein the Honorable Court presiding over the case, after hearing and considering the evidence, found that the punishment to be that of Naterual life in prison, under

penal code sect. 1181.7, on a timely motion by counsel of record.

Thereafter petitioner appealed to the district court of appeal of the State of California, Second Appellate District, in case no. 7496.

The Appellate Court Affirmed the conviction of the Supreior Court of Los Angeles County, on August 17, 1961, and releived the court appointed counsel on his own request.

Thereafter, petitioner saught to use the records which were alleged to have been given to his co-defendant, who refuses to communicate on the subject, thus creating a conflict of interest, which has ended all communications.

The Superior Court informed petitioner that Mr. Burton Marks, or the Appellate Court had the records.

thereafter petitioner wrote Mr. Marks, attorney of record, seeking the transcript of the procedings, Mr. Mards, did not have such records, on May 6, 1966, (see Exhibit –A.).

Thereafter petitioner saught the transcripts through his relatives, they could not afford to pay for such records.

[13] Thereafter petitioner filed a formal motion for the issuence of the records to the district court of appeals seeking the same records, (see Exhibit—B.) which was returned by the Court Clerk, without being filed, and with a letter stating the Court has no way of reproducing the records, but the court has the records, (see Exhibit—C.).

Thereafter, petitioner filed a Writ of Habeas Corpus, to the Supreme Court of the State of California, on July 21, 1966, (Crime No. 10232,), which was denied August 17, 1966, (see Exhibit—D).

Thereafter, petitioner wrote a letter to the California Supreme Court, to test whether it was because of his lack of funds that the state would not issue him a copy of the records petitioner alleged that his financual position had changed and he wished to purcheas the records. On Sep. 22, 1966, the Court informed petitioner that such a request should be directed to the court which pocessed such records, naming the appellate court, (see Exhibit—E).

Petitioner wrote the same letter to the District Court of Appeal, on September 26, 1966, wherein the Clerk noted on the bottom of petitioners letter, that petitioner could secure the a reproducing firm to copy the records, the records could

be available and petitioner would have to pay the fee's, and the Superior Court would still have a copy of the record and that they might proform the service for a fee. (see Exhibit—F.), dated September 29, 1966.

Thereafter, petitioner wrote the Superior Court of Los Angeles County, requesting the records and alleging that he was able to pay for them, (the Records), thereafter, the Clerk respondent with a letter dated (October 24, 1966,) informing petitioner, that he could recieve the records if he had funds to pay for them, (see Exhibit—G.).

[14] Arguement and Points of Authority

The facts and the Exhibits here to attached to this petition and made apart of this arguement, support the position that petitioner is made to suffer an undue hardship, and that the state of california is practicing discrimination, thus petitioner moves this court in good faith to here and determine all matters setforth, and amend the sufferage imposed upon him, which is contrary to the constitutions both federal and state.

Petitioner alleged that he is being denied due process of law and equal protection of the law by the restrainment of his records by the people of the state of california, et., al.

Petitioner arguement is that the 14th Amendment of the constitution of the united states is violated by a state through the denials of due process of law and equal protection of the law, to citizens of the united states, and further. the above clause's of the 14th, Amendment, guarantee's the following protection afforded by the following Amendments:

(1) the *First Amendment* ". . . to petition the government for a redress of grevance."
(2) the *Eight Amendment* ". . . nor cruel and unusual punishment inflicted."
(3) the *Fourteenth Amendment,* Due Process of Law and Equal Protection of the laws, clauses.

Petitioner argues further that a denial of the Constitutionally guaranteed rights and privileges of the united states, to a prisoner, by the state requires relinguishment of all custody over the person of the prisoner. *Fay* v. *Noid.*

372 U.S. —, Townsend v. Sain, 372 U.S. —.

That inlight of the supporting facts and hereto attached exhibits: A, B, C, D, E, F, and G., petitioner is in custody inviolation of the United States Constitution.

[15] Those exhibits will show beyond doubt, that the state of california has effectively denied petitioner the right to have a free reporters transcrip as an indigent person, and to properly pursue a timely petition to the higher courts, that such restrainment of record's where a timely appeal has been filed and decided adversitly to petitioner, imposes an undue hardship and deprives petitioner of "the right to petition the courts for redress of greivence", which is a denial of the First (1st.) Amendment through the 14th Amendment to the United States Constitution, however the State of California, rule's conditionally hold that a hearing to the State Supreme Court, is at the discretion of that court, (see California Rules of Court, Rule 29 (a).

Thus the prerequisites of Title 2854 of the U.S.C. sect. 2254 becomes a henderence to a petitioner who seeks to challenage the illegallity of his conviction in federal courts, nontheless the state provides the State Supreme Court with Jurisdiction to entertain the writ of habeas corpus (see Article 6, sect. 4, of the Calif. Const.) but to the contrary the writ, or any other form of petitioning for redress of greavence cannot be effective or properly presented whitout the trial transcript's.

As the Court said in *Douglas* vs. *California*, 372 U.S. 353 "when an indigent is forced to run this gamlet of a preliminary showing of merit, the right to appeal does not comport with fair procedure."

The present case holds an idenical position, that is petitioner should not be compelled to seek any extra-judical relief to to secure records where he has complied with the necessary rules of timely appealing to the State Appellate Court, to infuse such laws and not comply with them, is for a state to impose an extreme undue hardship and established "invidious discrimination" upon a prisoner (see *Williamson* vs. *Lee Optical Co.*, 348 U.S. 483, 489.), and as to the exact expression in *Douglas* vs. *California*, supra, ". . . while the indigent". . . . . "Already burdened by the preliminary [16] determination that his case is without merit, is forced to shift for himself."

However, it is impossiable to shift for himself, as petitioner cannot afford a transcript, but by both state and federal law he is entitled to a free transcript but cannot force his right in the state courts. "when society acts to deprive one of its members members of his life, liberity or properity, it takes most awesom steps, no general respect for, nor adherence to, the law as a whole can well be expected with judicial recognition of the paramount need for prompt, eminently fair and sober criminal procedures. The methods we employ in the enforcement of our criminal law have aptly been called the masure's by which the quality of our civilization may be judged." Cf. *Coppedge* vs. *United States*, 369 U.S. 438, 449.

In the case at bar the exhibits support and in their very essence express the continuation of a form of discrimination, and undue hardship to the indigents because they imply that it "Depends on the amount of money he has." *Griffin* vs. *Illinois*, 351 U.S. 12, at 19.

Very clearly now, *Griffin* vs. *Illinois*, supra, established the obligation of the State to funish a record of the proceedings to an indigent on appeal, nontheless, in the reply to petitioners Motion And Affidavid for the Issuance of Records, (see Exhibit—B) the Appellate Court proclaimed "*we have no way of reproducing the records.*"

Petitioner is inclined to *disbelieve* that statement, and views it as another *stumbling block*, thus the words of Mr. Justice Clark, disenting in *Douglas* vs. *California*, supra, looses their force where the Justice said "California furnishes the indigent a complete record . . ."

The basis of the present case holds that such denials of the fundimental process of adjudicating a cause, are prohibit by and inopposition to the Equal Protection Clause of the 14th Amendment, and inview of such direct denials petitioner has been subjected to a deprivation of justice which equals or supasses thos at the trial.

[17] Order and conformaty to the established rule's and law's of the State, by the State are mandentorary, obligatory, and compulsory upon the State, or relief from such denials are obligatory upon the Federal Courts by virture of the United States Constitution.

Petitioner's theory is supported in the revelently reasent ruling of the Supreme Court of the United States, in *Rinaldi*

vs. *Yeager*, No. 940 (1965) (Decided May 31, 1966). the court said:

"This Court has never held that the State's are required to establish avenues of Appellate review, once established, these avenues must be kept free of unreasoned distinctions that can only imped open and equal access to the Court's." (citing as follows)

Griffin vs. *California*, 351 U.S. 12;
Douglas vs. *California*, 372 U.S. 353;
Lane vs. Brown, 372 U.S. 477;
Draper vs. *Washington*,2 372 U.S. 487.

Accordingly, the right to petition the courts for redress of grievance, irrespectively to the grievance, that right exist within the basis of the American concept of justice and is binding on the adminstration of justice and fairness to all.

Petitioner hasa a limited knowledge of law both state and federal, but without the trial records even the most skilled lawyer could not establish a point of arguement and fact, thus, the cpmditions at present, the comdeming acts by the state in denying the records to petitioner is to establish a condition idenical to that of, *In Re: Chessman*, 44 C. 2d 1, (279 P. 2d 24) (Dessent)

"It would be just as reasonable to place shackles upon a man's limbs, and then tell him that it is his right and duty to defend himself against an impending physical assult. If the right of defense exists, it includes and carries with it the right of such freedom of action as is essentual and necessary to make such defense complete."

Turning the same denial of excess to the court's, through the denial of the records, towards the contention of the Eight (8) Amendment, which stats . . ". . nor cruel and unusual punishment inflicted"

[18] The 8th Amendment, has been applied to several conditional, inflictions of punishment which was held by the federal courts to have violated the 8th Amendment. Accordingly, petitioners arguement is based on the theory *that any punishment by a state which is contrary to the law's of that*

state, and those of the United States, is beyond doubt cruel and unusual punishment, solely on the basis that the states have a right to make their laws, but there is no right to violate those laws by anyone, not even the state.

In *Roberson* vs. *California,* 370 U.S. 668, the Supreme Court clarefied any doubt in the 14th, Amendment's guarantee against cruel and unusual punishment, in ruling the California statue, and the treatment of drug addition, as cruel and unusual punishment this point was discussed in *Redding vs. Pate,* 220 F. 2d supp.124 (1963), wherein the court cited a bit of *Roberson* vs. *California,* stating:

> "The case makes it clear that the concept of cruel and unusual punishment is *broad and elastic.*" (emp. Add).

Petitioner further argues that the denial of records imposes a systematic process of distributing cruel and unusual punishment, equal to that which is established in the mode surrounding the forced confessions, inthat once the confession is taken, the defense against its use is impossible, because the prosecution does not have to introduce it to use it.

In the instent case the errors in the record will never be presented to a court of law, solely because they are not made available to the petitioner, thus who could contend that the conviction is valid or invalid.

It is irrevelant whether the state has a method to reproduce the records or not, the essence is that the state has established appellate review and cannot use any such reason to imped, block, hinder, or delay the process of appeals, and to do so is cruel and penertrating to the very concept of due process of law.

[19] As the California Supreme Court said in *People* vs. *Smith,* 34 Cal. 2d 449, 453 [211 P. 2d 561]. "Of course, in a criminal case, on a proper appeal, a defendent is not required to pay for a transcript."

Of course in the present case petitioner has never recieved a transcript, but a "proper appeal" was timely taken, under those circumstances to punish him by not issuing the records is unusual punishment and "undue hardship" which is the words employed by the Honorable Justice Traynor, of the State Supreme Court, in the case of *In Re: Henderson,* 61 Cal. 2d , (61 A.C.).

". . . . To deny him relief . . . when he requested the transcript would result in undue hardship."

And again the court said in *Phelan* vs. *Superior Court*, (1950) 35 Cal. 2d 363, 371-372, (217 P. 2d 951) "Equally the denial of transcripts imposes as a result and undue hardship."

In the case at bar it is argued, and on valid grounds that the repetitious denials of relief, by the way of denying the trial transcripts supasses the norm and is an extreme and crude form of cruel and unusual punishment.

In summerizing the explicit position of petitioners never ending plead for justice the guaranteed protection of the 14th, Amendment, inthat his cause qulifies him to befurnished afree trial transcripts and the california courts have continued to abridge that right, thus in doing so denied him privileges and immunites of the United States Constitution.

"That a discriminatory denial of the statutory right of a appea; so a violation of the Equal protection clause" *Cochran* vs. *Kansas*, 316 U.S. 255.

That by reason of his position and contentions of this petition, the writ of habeas corpus should and must issue as law and justice requires.

[20] Conclusion

Petitioner no longer pleads for the release of records as a petitioner at present has suffered the extreme of deprivation, and cannot secure his rights in this state, thus petitioner as a product of this states discriminatory practis seeks release from prison as complete re-linguishment of all custody over petitioner.

Prayer

Wherefore petitioner prays that this honorable court will issue an order to the above named respondent ordering him, commanding him to release petitioner, from all custody, or in turn issue an order to show cause why such relief should not be granted, as law and justice requires.

It is so prayed, as petitioner forever prays.

Dated this 23 day of Nov. 1966. Under the penalty of perjury the foregoing is true and correct, as executed November, 23, 1966.

Willie Wade, Jr., P.O. Box A-38671A, Tamal, California. In Pro. Per.

[21] EXHIBIT * A

Law Offices of
BURTON MARKS
8447 Wilshire Boulevard, Suite 217
Beverly Hills, California 90211
Telephone (213) 653-4141

Burton Marks
Harvey A. Schneider

of counsel
Jack K. Berman

San Francisco Offices
Penthouse-Whitcombe Hotel
1231 Market Street
San Francisco, California 94114

In reply refer to file No:

May 6, 1966

Mr. Willie Waide, Jr.
Box No. A-38671A
Tamal, California

Re: People v. Waide, Crime No. 7496

Dear Mr. Waide:

In answer to your letter of April 26, 1966, wherein you requested the transcripts in the above entitled case, I regret to inform you that I cannot be of assistance.

In reviewing your file I find that I never did have the copies of the Clerk's Transcript and 3 volumes of the Reporter's Transcript which belong to either you or Mr. Pollard. They were apparently delivered to Mr. Pollard when he filed his Notice of Appeal and although I requested him to forward them to me, he did not do so.

In preparing Appellant's Opening Brief in this case, I find that I borrowed the transcripts from the office of the Attorney General here in Los Angeles and returned them to that office on March 1, 1961.

I do not recall your aunt coming to the office for the records and I suggest that you attempt to contact Mr. Pollard.

Very truly yours, /s/ B Marks.

BM : lm

66

* * * * *

[22] EXHIBIT * B

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION TWO

WILLIE WADE, JR., Petitioner,

VS

THE PEOPLE OF THE STATE OF CALIFORNIA, et al., Respondent

Crim. No. 7496

MOTION AND AFFIDAVIT FOR THE ISSUENCE OF RECORDS

To: the Honorable Presiding judge of the above entitled court.

Comes now, Willie Wade, Jr., hereafter refered to as petitioner motions this honorable court for all records in the above criminal procedings, (Crim. No. 7496) People v. Wade, to be preparied and issued

The Honorable courts jurisdiction to issue the records in this case is based in the facts that this court rendered it's decision in the above numbered case on Augest 17 1961, Affirming the Los Angeles Superior Court order denying motion for new trial, thus petitioners timely notice of appeal gives him the right to there reporters transcript, further as petitioner is without funds to pay for such transcripts, they must be issued at the expense of the state, even though the ten day period for appeal has elapsed.

I

A certified copy of the transcripts were issued to petitioners co-defendant, Joe Lewis Pollard, but there exist a conflict of interest between the defendants, limiting the communications, thus petitioner cannot properly present his cause to the courts. Further, petitioner has attempted to secure the records from the attorney of record Mr. Burton Marks. see (exhibit—A) was to the effect another denial of records.

As an authority in the matter of issueing records to those who have timely appealed fron the judgemnt of the Superior Courts, petitioner depends solely upon the State Supreme

Courts opinion in the 1964 case of In Re: Henderson, (Crim No. 7631. In Bank, July 9, 1964,) In that case the petitioner requested a free reporters transcript, to effectively present his cause. The case at bar consist of the request, for records. Further as the court said in the case of In Re: Henderson, "On an appeal from a felony conviction in a superior court a defendant, regardless of his ability to pay, has a right to a reporters transcript furnished at the expense of the state." See People V. Smith (1949) 34 Cal. 2d 449, 450 (211 P.2d 561).

[23] The case at bar the petitioner was found guilty of Murder in the First Degree, sentenced to his natural life in the state prison, as the law prescribes, and he has suffered this undue hardship, in his attempted to secure the records which he has a right to,

II

It is requested that this honorable Court issue an order to the Superior Court of the County of Los Angeles, California, ordering the said Court to prepair the following records, and forward a certified copy to petitioner, to consist of:

1. the records of arrest, or reports thereof.
2. records of the information.
3. records of the arraignment.
4. records of the preliminary hearing.
5. records of the trial.
6. records of the sentencing.

Conclusion

That for the facts established in this Motion for Records, It is respectfully requested that this Honorable Court, issue an order commanding the Superior Court of the County of Los Angeles, California, Clerk, to forward the said records to Willie Wade, Jr., A—38671A, San Quentin, Calif. Free of any charge, as petitioner is without funds with which to pay the cost.

Accordingly, it is so prayed.

I declare under the penality of perjury that the foregoing is true and correct.

Dated This 23 day of Nov. 1966.

Respectfully Requested, /s/ Willie Wade, Jr., Box A-38671A, Tamal, California.

* * * * *

[24] EXHIBIT * C

clerk's office
DISTRICT COURT OF APPEAL, STATE OF CALIFORNIA
second appellate district
1201 State Building
217 West First Street
Phone: MA 0-3180

May 27, 1966

J.T. Alley
clerk

Willie Wade, Jr.
A-38671
Tamal, Calif.

clay robbins, jr.
chief deputy
R.N. Wilson
J.L. Kavanagh
H.W. Cunningham
deputies

2d Crim 7496

Los Angeles, California 90012

At the direction of the court returning herewith your motion for records for the reason that your case is long since final and this office is possessed with only the original record and have no method of duplication.

J.T. Alley, Clerk, By /s/J.L. Kavanagh, Deputy.

* * * * *

[25] EXHIBIT * D

In Pro. Per.
Willie Wade, Jr.
Box A-38671A
Tamal, California,

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Case No. —

WILLIE WADE, JR., In Pro. Per. Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA, et., al,. Respondents.

A PETITION FOR A WRIT OF HABEAS CORPUS

To: The Honorable Justice of the above entitled Court, and associates Justice's therein.

Comes now, Willie Wade, Jr., herein and after referred to as petitioner, in the above entitled matter, moves this Honorable Court to issue all records in the Case of *People vs. Wade, No. 7496,* from the illegal restrainment by the people of the state of california, that he, petitioner is a citizen of the united states, and is at present a resident of the county of Marin, state of california, over the age of twenty one (21) years

Jurisdiction

This Honorable Courts Jurisdiction is invoked under the authority and power of the Constitution of the State of California, Article VI, Section 5, and confered by the penal code, of the State of California, Sections: 1473; 1478; 1487.
Petitioner was informed by

Statement of the Case

Petitioner was charged in an information with a felony to wit a violation of Penal Code, section 187, better known as murder, by a jury trial that murder was found to be in the first degree, punishable bydeath as the law prescrives, however, the Honorable Judge, of the superior court of the

county of Los Angeles, California, found that punishment to be that of Natural Life, in prison. (penal code section, 1181.7), On a timely motion for a new trial, by counsel of record.

The petitioner Appealed to the District Court of Appeals Second Appellate District, Southern Division, of California, (case no. *7496*). Thus the Appellate Court, Affirmed the conviction and dismissed the Appeal, on August 17, 1961. [26] The petitioner requested for records from the Superior Court of Los Angeles. request was denied *October 1965*.

The petitioner request for records fron the Attorney of records Mr. Burton Marks, the said Attorney didnot have such records, on May 6, 1966.

The petitioner requested for records through a formal *Motion for Records* to the District Court of Appeals, however, the request was denied by the Clerk and the Motion for Records was not filed, on May 17, 1966.

Statement of the Facts

Petitioner was informed by the Superior Court of Los Angeles, California. Clerk, in reply to a request for records that either the Attorney of records or the Appellate Court had the records in the case of *People* vs. *Wade*, No 7496. Thereafter, petitioner wrote to Mr. Marks, who didnot reply, petitioner has contacted his relatives to secure the records from said counsel. thus after a year petitioners relatives informed him that they could not pay for said records due to finanitual problems, neverthe-less, petitioner requested the records again from Mr. Marks, who informed the petitioner that the records he used during the appeal belonged to the Attorney Generals Office or the District Attorney, and that he had returned them to that office, the Attorney said, that the co-defendent had the copy of the records, and had refused to forward them when requested, by Mr. Marks, to file the opening brief in the Appellate Court.

However the Co-defendant dismissed his appeal before the hearing and retained his copy of the records, and refused to allow petitioner to use them, thus adding to the conflict of interest, and limiting the communications.

Thereafter the petitioner Motioned the Appellate Court for records in a formal Motion for Records, the Clerk, denied the motion without filing, the said motion, petitioner is without funds with which to pay.

Allegations

Petitioner is at present being denied due process of law and equal protection of the law by the illegall restrainment of this trial records, by the People of the State of California

Arguement

Your petitioner move's this honorable court, as a last resort to issue all records in the above numbered cause to Willie Wade, Jr. at San Quentin, state prison, that the said petitioner has no funds with which to pay the cost of securing the following records:

1. Records of the information
2. Records of the arraingment
[27] 3. Records of the preliminary hearing
4. Records of the trial/reporters transcripts/
5. Records of the sentencing
6. Records of the arrest/arrest reports/

A certified copy of the aforesaid records, were issued to the petitioners co-defendant Joe Lewis Pollard, but there exist a conflict of interest and petitioner cannot properly present his cause before the courts.

That petitioner believes that he has a legal right to all records in the case at bar, thus it is so requested that this honorable court issue an order granting the petitioner all records.

Conclusion and Prayer

That for the afore stated facts established in this petitioners, petition for a writ of habeas corpus, it is so requested that this honorable court issue the records in the case at bar or issue an order to the District court of Appeal commanding them to issue the records to *Willie Wade, Jr.* box A-38671A Tamal, California. Free of any charge, as petitioner is without fimds with which to pay.

Accordingly it is so prayed as petitioner for ever prays.

I, Willie Wade, Jr., swear under the penality of perjury that the foregoing is true and correct.

Dated this — day of — 1966.

Respectfully Submitted, /s/ Willie Wade, Jr., A-38671A.

* * * * *

[28] EXHIBIT * E

Office Of The Clerk,

SUPREME COURT OF CALIFORNIA
William I. Sullivan, Clerk

San Francisco, California
September 22, 1966

G.E. Bishel, Chief Deputy
Deputies
Joseph M. Rogers
Keith M. Hawkes
Remo C. Matteoli
Mark F. Thompson
San Francisco
David Blomgren
Robert F. Johnson
Los Angeles
A.F. Bradovich
Sacramento

offices
San Francisco 94102
4250 State Building
Los Angeles 90012
1005 State Building
Sacramento 95814
108 Library and Court Build

Mr. Willie Wade, Jr.
Box A-38671-A
State Prison
San Quentin, California 94964

Re: 2 Crim. 7496—People v. Wade, et al.

Dear Sir:

In response to your request for records in the above case, you are advised that such a request should be directed to the court possessed of the original record. In this instance, it is the District Court of Appeal, Second Appellate District, State Building, Los Angeles.

Very truely yours, William I. Sullivan, Clerk, By:
/s/ G. E. Bishel, Chief Deputy.

* * * * *

[29] EXHIBIT * F

DISTRICT COURT OF APPEALS, STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

Name Willie Wade Jr
Box No. A-38671A.
Date Sept /26/, 1966

Re: People v. Willie Wade Jr

2d Crim 7496

To Clerk.

Sir; I Willie Wade Jr. Defendant in the above numbered case.

Makes the following request, my finanucal position has changed and thus I would like to know the exact costs of the following records and who should I write to secure them.

The records consist of:
(1) The trial transcripts.
(2) The records of sentence.
In closing I thank you in advance.

/s/ Willie Wade Jr, A38671A, Tamal, Calif. 94964.

This court has no facility for reproducing records. The court records here could be made available for reproduction with whatever reproducing firm you might obtain to copy our records. Any costs for such service would be between you and the reproducing firm you hire. Or, it is possible that the Superior Court would still have these records and that they might perform the service for a fee. You could contact the Criminal Appellate Dept. there.

(rubber stamp)

DISTRICT COURT OF APPEAL
SECOND APPELLATE DISTRICT
SEP 29 1966

* * * * *

[30] EXHIBIT * G

County of Los Angeles

COUNTY CLERK AND CLERK OF THE SUPERIOR COURT
111 North Hill Street

Mailing Address: P.O. Box 151
Los Angeles, California 90053

Madison 5-3414

October 24, 1966

William G. Sharp
County Clerk

E.G. Hatcher
Chief Deputy

Willie Wade, Jr.
Box No. A 38671 A
Tamal, California

Re: Superior Court Case No. 229683

The People vs. Willie Wade Jr.

Dear Sir:

In response to your request, you are advised that the fee for certified copies of the following document amounts to $1.50.

Judgment of November 11, 1960, 1 page	$ .50
Certification	1.00

Under the laws of this State, all statutory fees must be paid in advance. In reply, please refer to the aforementioned case Number.

The transcript of the proceedings had in Superior Court can be obtained from the official court reporter who reported the proceedings. You must contact the reporter and make your own financial arrangements with him concerning the transcripts.

For your information, the names and addreses of the reporters are as follows:

Barbara Heslowitz, 208 Brunswig Building, 510 New High Street, Los Angeles, Calif. Laura Breska, 2871

Nichols Canyon Place, Los Angeles, California Jean Henderson, 407 R Courthouse, 111 North Hill, Los Angeles, California Pauline Ross, 3731 Weslin Avenue, Sherman Oaks, California Julius Koliner, 807 Hall of Justice, 211 West Temple, Los Angeles, California Ronald V. Olds 200 North Garfield, Pasadena, California Margaret Lund, 1725 Main Street, Santa Monica, California.

Very truley yours, William G. Sharp, County Clerk.

By /s/ P. J. Talmachoff, Chief, Criminal Division.

PJT/km

* * * * *

[30a] AFFIDAVIT OF VERIFICATION Omitted in printing.

[30b] PROOF OF SERVICE BY MAIL Omitted in printing.

[File endorsement omitted]

[31] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

No. 46568

[Title omitted]

ORDER TO SHOW CAUSE—February 15, 1967

Based upon the petition filed herein and good cause appearing:

It Is Hereby Ordered that Respondent(s) file a return with this Court on or before the [1] 24th day of February, 1967, to show cause, if any there be, why a writ of habeas corpus should not be issued herein;

It Is Further Hereby Ordered that the Clerk of this Court forthwith serve a copy of this order upon Respondent(s) as well as upon Petitioner and a copy of the petition and of this order upon official counsel for Respondent(s) and that Respondent(s) serve a copy of the return upon Petitioner prior to the filing thereof;

It Is Further Hereby Ordered that if Petitioner files a traverse to the return, Petitioner shall do so prior to the date next below specified; and

It Is Further Hereby Ordered that Respondent(s) or counsel for Respondent(s) appear in person before this Court on the [2] 6th day of March, 1967, at 9:45 a.m. to complete compliance with this order to show cause.

Dated: February 15, 1967.

Copies mailed to: AG.* & Pet. 2-16-67 T.P.U.

Alfonso J. Zirpoli, Judge

---

* Pet. also.

[1] Specify a date approximately ten days after date of order.

[2] Specify a date not later than twenty days after date of order.

[32] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

No. 46568

[Title omitted]

RETURN TO ORDER TO SHOW CAUSE AND POINTS AND AUTHORITIES IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS —Filed February 24, 1967

Come now Lawrence E. Wilson, Warden of the California State Prison at San Quentin, and the People of the State of California, and for a return to the order to show cause heretofore issued in the above-entitled matter, returnable the 24th day of February, 1967, state:

I

That petitioner, Willie Wade, Jr., is properly imprisoned in the California State Prison at San Quentin, California, pursuant to two valid judgments and orders of commitment of the Superior Court of the State of California for the County of Los Angeles. In an action entitled "The People [33] of the State of California vs. Willie Wade, Jr.," No. 182319, in the files of said superior court, petitioner was convicted on October 11, 1956, of violation of California Penal Code section 245 (assault with a deadly weapon) and was sentenced to the state prison for the term prescribed by law (ten years maximum). Petitioner was represented by counsel. A certified copy of this order of commitment is attached hereto and made a part hereof and is "EXHIBIT A." In an action entitled "The People of the State of California vs. Willie Wade, Jr.," No. 229683, in the files of said superior court, petitioner was convicted by jury on November 1, 1960, of violation of California Penal Code section 187 (first degree murder) and was sentenced to the state prison for the term of his natural life. Petitioner was represented by counsel. A copy of this judgment and order of commitment is attached hereto and made a part hereof and is "EXHIBIT B."

II

That petitioner appealed his conviction of violation of Penal Code section 187, see Exhibit B, *supra*, to the Court of Appeal of the State of California, Second Appellate District, Case No. 7946. That on August 17, 1961, the Court of Appeal affirmed petitioner's conviction of violation of Penal Code section 187.

III

That petitioner had the benefit of assigned counsel in the preparation of the above appeal. That such assigned counsel had access to, and in fact used to prepare the briefs on appeal, a complete stenographer's record and clerk's transcript of the proceedings before the trial court in Los Angeles County Case No. 229683, which resulted in petitioner's conviction of violation of Penal Code section 187. See Peti-
[34] tioner's Exhibit A.

Wherefore, respondents respectfully pray that the order to show cause heretofore issued should be discharged, the petition denied and the proceedings dismissed.

Dated: February 24, 1967

Thomas C. Lynch, Attorney General of the State of California. Robert R. Granucci, Deputy Attorney General. /s/ Karl S. Mayer, Deputy Attorney General, Attorneys for Respondents.

[35] Points and Authorities in Support of Return to Order to Show Cause

Petitioner seeks a release from his custody on the ground that his continuing commitment is invalid for the sole reason that the State of California has failed to put at his disposal a free reporter's transcript of his proceedings at the trial which resulted in his conviction of first degree murder.

Petitioner has not alleged that the proceedings before the trial court which led to this conviction were in any way unfair, nor has he alleged that the proceedings on appeal which resulted in the affirmance of this conviction were in any way unfair.

Moreover, Exhibit A, attached to and incorporated in petitioner's petition affirmatively shows that petitioner was represented by counsel on appeal and that his appellate counsel had access to and in fact used a clerk's transcript and a complete reporter's transcript of the proceedings at trial.

Petitioner has not alleged that his representations by either trial or appellate counsel was in any way inadequate.

It it apparent that the petition at bar lacks any contention of law or allegation of fact cognizable by this Court in a habeas corpus proceeding which would justify the granting of the relief prayed for by petitioner or otherwise justify issuance of a writ of habeas corpus.

Conclusion

For the foregoing reasons, respondent respectfully [35a] submits that the order to show cause should be discharged, the petition denied and the proceedings dismissed.

Dated: February 24, 1967

Thomas C. Lynch, Attorney General of the State of California. Robert R. Granucci, Deputy Attorney General. /s/ Karl S. Mayer, Deputy Attorney General, Attorneys for Respondents.

---

[36] Statement of Service by Mail Omitted in printing.

[37] EXHIBIT A

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

MINUTES

October 11, 1956

Present Hon Allen T Lynch, Judge
Department No. 46

182319

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

WILLIE WADE, JR., Alias William Wade, Jr., Defendant,

Deputy District Attorney J Kolts; Deputy Probation Officer H E Weissberg; and Defendant with his counsel, Deputy Public Defender J Brettmann, present. The true name of defendant is "Willie Wade, Jr.". Probation is denied and defendant is sentenced as indicated.

Whereas the said defendant having been duly found guilty in this court of the crime of ASSAULT WITH A DEADLY WEAPON, (Sec 245 PC), a felony, as charged in the information

[C. I. M. 1956 OCT 24 PM 1:55 G. C. Admittance.]

It is Therefore Ordered, Adjudged and Decreed that the said defendant be punished by imprisonment in the State Prison for the term prescribed by law.

It is further Ordered that the defendant be remanded into the custody of the Sheriff of the County of Los Angeles, to be by him delivered into the custody of the Director of Corrections at the California State Prison at Chino.

This Minute Order has been entered on Oct 16, 1956, Harold J. Ostly, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles.

By C. T. Harold, Deputy.

MINUTES—State Prison (Men)

The within instrument is a correct copy of the original on file in this office.

Attest:

L. E. Wilson, Warden California State Prison at San Quentin By W. Schiller, Records Officer.

[38] EXHIBIT B

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

JUDGMENT

Department No. 105

November 1, 1960

Present Hon. Lewis Drucker, Judge

22968-3

THE PEOPLE OF THE STATE OF CALIFORNIA,

vs.

WILLIE WADE, JR.

Hearing re defendant's motion for a new trial, continued from October 20, 1960, is resumed. Deputy District Attorney Samuel Mayerson and Defendant with counsel, Joseph Rosen, present. Further argument is made by respective counsel. Defendant moves for reduction of the penalty fixed by the Jury. The penalty is ordered reduced to Life Imprisonment and as reduced, defendant's motion for a new trial is denied. Defendant waives time. Defendant is sentenced as indicated. Subsequently: Defendant's Notice of Appeal is filed. Pursuant to defendant's written motion for stay of execution of sentence, execution of sentence, herein, is ordered stayed to and including January 1, 1961.

Whereas the said defendant having been duly found guilty in this court of the crime of MURDER (Sec 187 PC), a felony, as charged in the information, which the Jury found to be Murder of the first degree and fixed the penalty at death and in lieu of granting a new trial the Court reduced the penalty to life imprisonment.

[C. I. M. 1961 Jan 10 PM 1:50, G. C. Admittance.]

It is Therefore Ordered, Adjudged and Decreed that the said defendant be punished by imprisonment in the State Prison for the term of his natural life.

It is further Ordered that the defendant be remanded into

the custody of the Sheriff of the County of Los Angeles, to be by him delivered into the custody of the Director of Corrections at the California State Prison at Chino.

This Minute Order has been entered on Nov. 4, 1960, Harold J. Ostly, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles.

By Virgil Henry, Deputy

JUDGMENT—State Prison (Men)

The within instrument is a correct copy of the original on file in this office.

Attest:

L. E. Wilson, Warden California State Prison at San Quentin By W. Schiller, Records Officer.

[39-45] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

[Title omitted]

Case No. Civil No. 46568

MOTION TO STAY PROCEEDINGS—Filed March 8, 1967

This court isued an order to show cause in the above entitled case on February 16, 1967, to be returned on February 24, 1967, and allowing Petitioner until the 6th Of March 1967, in order to file a Traverse to the return to the order to show cause. Petitioner received the Respondent's return on March 1, 1967, and on March 2, 1967, while petitioner was setting in the sun on the lower yard with another inmate reading over the return Office Boysen, working in the capcity of Lower Yard Stg. taken the return and accused Petitioner of giving legal assistances, as a result of this act the Petitioner is unable to met the March 6, 1967 deadline and motion this court to stay this proceeding pending the determination of the civil complaint hereto attached.

Plaintiff feel that without this action being decided he would be unable to file an adequate Treverse tot the Respondent's return to the order to show cause.

I declare under the penalty of perjury that the foregoing is true and correct.

Dated: March 6, 1967, at Tamal, California.

/S/ Charles R. Pahrman, my Commission expires Jan. 20, 1969.

Willie Wade, Jr, Petitioner, Box No. A-38671A, Tamal, California.

Subscribed and sworn to before me this 6th day of April, 1967, Charles R. Pahrman, Notary Public in and for the County of Marin, State of California.

* * * * *

[46] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Civil No. 46568

[Title omitted]

TRAVERSE IN OPPOSITION TO THE RETURN TO THE ORDER TO SHOW CAUSE AND ARGUMENT POINTS AND AUTHORTIES

Come's now, Willie Wade, Jr., Petitioner, in the above entitled matter, and Petitioner in the matter of 'Petition for a Writ of Habeas Corpus, who states;

I

The petitioner Willie Wade, Jr., is imprisoned in the State of California, at San Quentin, pursuant to *one* W.W. judgment and commitment of the Superior Court of the State of California, for the County of Los Angeles, in the action entitled "The People of the State of California VS. Willie Wade, Jr.," No. 229683, convicted on November 1, 1960, by jury, of violation of the Cal. Pen. Code section 187, (murder in the first degree), and thereafter, was sentenced to the state prison for the term of his natural life.

The Respondents *incorrectly* relates that "Petitioner, Willie Wade, Jr., in properly imprisoned in California State Prison at San Quentin, California pursuant to two valid judgments. . . . ." (see paragarph 'I' Respondents Return).

Respondent refers to the commitment attached to the 'Return' and made apart thereof as "EXHIBIT A", (Case No. 182319).

[47] The said violation of Cal. Pen. Code sec., 245, (assault with a deadly weapon), a maximum term of ten (10) years, however, the conviction was had on October 11, 1956, thus the sentence expired October 11, 1966, which would be the maximun term of ten years, by law, and therefore Petitioner is not imprisoned under the said commitment.

II

Petitioner properly Appealed his conviction of violation of Penal Code sec., 187, to the District Court of Appeals of the State of California, second Appellate District, Case no.

7496. On August 17, 1961, the Court of Appeals erroniously affirmed the conviction, as Petitioner believes.

III

Petitioner was appointed counsel in the preparation of above said appeal in case no. 229683, however counsel withdrew through his own motion.

Dated, March 20, 1967.

Willie Wade, Jr., P.O. Box A-38671A, Tamal, California.

[48] Arguement Points of Authorities

Petitioner seeks a release from all custody on the grounds that the State of California has denied his due process and equal protection of the law, by the illegally restrainment of his records and denying him access to the courts and subsequently inflicting cruel and unusual punishment, through practicing invidious discreimination on a finanual basis, thusly depriving him of rights and privileges enjoyed by other person, inmates incarcerated in this state, thereby making his 'custody in violation of the Constitution or laws or treaties of the United States. Title 28, U.S.C.A. 2241 (3).

It is in fact and in law that petitioner is entitled to release from prison, "Moreover, so far as the supression of respondent's original appeal papers is concerned, the record before us strongly indicates that ascribes to the state supreme court could not have been made." *Cf. Dowd* v. *United States ex rel,* 340 U.S. 206.

And as the court said in closing the above entitled case: (Dowd, supra), "On remand, the District Court should enter such orders as are appropriate to allow the state a reasonable time in which to afford respondent the full appellate review he would have received but for the supression of his papers, filing which he shall be discharged. See Mahler v. Eby, 264 U.S. 32, 46." Cf. Dowd v. United States, 340 U.S. 206.

Therefore it is apparent that the supression of the records in the instant case requires relinquishment of all custody, in that such supression of records and the same establishes a method by which to limit petitioners access to the courts, and inflicts a sufferage upon him grater than any physical

abuse, that such unusual punishment is cruel, and psycologically defeating, to the human liberity, W.W. in the very construction of the Constitution, as made appliable to the States by virture of the Due Process and Equal Protection clauses of the 14th, Amendment to the U.S, Constitution. One further point from Dowd, supra, the Court said: "Moreover, the actual record (if appellate counsel could have it to inspect) might disclose issues substantial enough to constitute probable or possible 'plain error' even though trial counsel was not aware of their existence; and the indigent should have the same opportunity as the wealthy to urge that plain error should be noticed on appeal."

[49] The request for a discharge from all custody is in order, on the basis that the State of California, has been allowed the right to make it laws governing the issuance of records and appeals, thus to establish a system contary to to the one's which are established, and use that system on an discriminatory basis, which vi olates the U.S. Constitution, demands nothing less then release. "This Court has never held that the states are required to establish avenues of appellate review, but it is now fundamental that, once established, these avenues must be keept free of unreasoned distinctions that can only impede open and equal access to the courts. *Griffin* v. *Illinois,* 351 U.S. 12,; *Douglas* v. *California,* 372 U.S. 353; *Lane* v. *Brown,* 372 U.S. 477; *Draper* v. *Washington,* 372 U.S. 487.

"That a discriminatory denial of the statutory right of appeal is a violation of the Equal Protection clause" *Cochran* v. *Kansas,* 316 U.S. 255.

The exhibits attached to the original petition for a writ of Habeas Corpus will clearly show that IF PETITIONER HAS THE MONEY HE CAN BUY JUSTICE IN THIS STATE, "There remains the question of the disposition to be made of the case. Fortunately, we are not confronted with the dilemma envisaged by the State of having to choose between ordering an absolute dischareg /sic/ of the prisoner and denying him all relief. The District Court has power in a habeas corpus proceeding to "dispose of the matter as law and justice require." 28 U.S.C. sec. 2243. The Fourtheenth Amendment precludes Indiana from keeping him of the type of appeal generally afforded those convicted of crime. On the other hand, justice does not require Indiana to discharge

a respondent if such an appeal is granted and revels a trial record free from error. Now that this court has determined the Federal Constitutional question, Indiana may find it possible to provide the appellate review which respondent is entitled. The judgments of the Court of Appeals and the District Court are vacated and the case remanded. On remand, the District Court should enter such orders as are appropriate to allow the state a reasonable time in which to afford respondent the full appellate review he would have received *but for the suppression of his /records/ papers, failing which he shall be discharged.* See *Mahler* v. *Fry,* 264 U.S. 32, 46." Cf. *Dowd* vs. *United States,* 340 U.S. 206 at p. 210.

As the only question is the discharge of petitioner, remains, it is held in: Cochran v. Kansas, supra, "if the officials of a state penitentiary in enforcing prison ruls has supressed appeal documents of an inmate, thereby making it impossiable for him to perfect an appeal within the time prescribed by statues, such inmate was deprived of his rights under the fourtheenth amendment, and he was entitled to releas upon petition for Writ of Habeas Corpus." 316 U.S. 255.

Conclusion

That for the afore said reasons and the factual position as supported by law and the Constitution of the United Stated, petitioner respectfully moves this Honorable Court, to issue an order to the Said Respondent, ordering him, command him to release petitioner Willie Wade, Jr., from all custody, as law and justice requires, Accordingly, it is so prayed, as petitioner forever parys.

Dated This 20 Day of March, 1967.

Under the penalty of purjury the foregoing is true and correct.

Willie Wade, Jr., Petitioner, Box A-38671 A, Tamal, California.

---

[50] Verification Omitted in printing.

---

[51] Proof of Service by Mail Omitted in printing.

[52] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

[Title omitted]

No. 46568

ORDER GRANTING PETITION FOR A WRIT OF HABEAS CORPUS—Filed June 5, 1967.

Petitioner is a California State prisoner confined at the San Quentin State Prison pursuant to a 1960 conviction of first degree murder, Cal. Pen. Code § 187, for which he received a sentence of imprisonment for life.

He makes application to this court for a writ of habeas corpus, alleging that he is indigent and wishes to prepare a petition for a writ of habeas corpus attacking his conviction, but that the State of California refuses to provide him with a free copy of the transcript of his trial to aid him in preparation of such a petition.[1]

[53] The question of entitlement to a transcript to prepare a petition for a writ of habeas corpus is one of first

---

[1] Petitioner took an appeals from his conviction to the California District Court of Appeal, which affirmed the conviction, although no reported opinion has been found or cited. It appears that petitioner's attorney used the original transcript borrowed temporarily from the court to prepare his brief, but that petitioner did not receive a copy of the transcript. Petitioner's co-defendant, one Joe Lewis Pollard, allegedly received a copy of the transcript and still has it in his possession. Petitioner apparently does not have access to Pollard's copy of the transcript, and he further alleges that there is presently a conflict of interest between them.

Petitioner exhausted his state remedies by filing a motion for the issuance of records with the District Court of Appeal, which was denied in May of 1966, and subsequently by filing a petition for a writ of habeas corpus in the California Supreme Court, which was denied in August of 1966, when he again attempted to secure the desired transcript.

impression in this court, and the court concludes that he is so entitled.

The United States Supreme Court, as early as 1961, stated in dicta that no financial consideration could be interposed to deny a petitioner the right to sue for his liberty. *Smith* v. *Bennett*, 365 U.S. 708 (1961). *Smith* dealt with a habeas corpus filing fee, but relied upon the reasoning of *Griffin* v. *Illinois*, 351 U.S. 12 (1956), which is a transcript on appeal case. In *Lane* v. *Brown*, 372 U.S. 477 (1963), the Supreme Court, relying upon dicta in *Smith*, held that a state must provide a transcript for the appeal of post conviction proceedings. This principle was reaffirmed in *Long* v. *District Court*, 385 U.S. 192 (1966). In *Long*, the court further restated the underlying consideration that "these principles were not to be limited to direct appeals from criminal convictions, but extended alike to state post-conviction proceedings . . .", *Long* v. *District Court*, *supra* at 194.

Thus, although there is no square holding on the precise question of the right to a transcript in preparing a petition for a writ of habeas corpus rather than an appeal, the logic of the Supreme Court holdings compels a finding that such a right exists.

[54] Respondent and the State of California have taken the position that petitioner has shown no good cause for his request. There are two answers to this. First, he alleges that there were errors in his conviction, and second, it may not be possible to pinpoint such alleged errors in the absence of a transcript.

Accordingly, It Is Ordered that petitioner be released from the custody of respondent; however, execution of this order is suspended for a period of ten days from the entry thereof, within which time respondent may file a notice of appeal and request further stay. The order of release is without prejudice to the State to apply to have the order set aside in the event the aforementioned transcripts are provided to petitioner or the court is assured that they will be provided to petitioner within a reasonable time.

Dated: June 5, 1967

Alfonso J. Zirpoli, United States District Judge.

[55] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

No. 46568

[Title omitted]

NOTICE OF APPEAL—Filed June 15, 1967

Notice Is Hereby Given that Louis Nelson, Warden of the California State Prison at San Quentin, California, successor to Lawrence E. Wilson, named as respondent herein, and the People of the State of California, respondents, hereby appeal to the United States Court of Appeals for the Ninth Circuit, from the order and final judgment granting petition for writ of habeas corpus entered in this action on June 5, 1967.

Dated: June 14, 1967

Thomas C. Lynch, Attorney General of the State of California. Robert R. Granucci, Deputy Attorney General. Karl S. Mayer, Deputy Attorney General, Attorneys for Respondent.

---

[56] STATEMENT OF SERVICE BY MAIL Omitted in printing.

[57] [File endorsement omitted]

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

No. 46568

[Title omitted]

ORDER STAYING EXECUTION OF JUDGMENT PENDING APPEAL—June 15, 1967

It Is Hereby Ordered that the Order of this Court entered June 5, 1967, in the above-entitled matter be stayed pending the timely filing of a notice of appeal by respondent and pending the determination of such appeal.

Dated: June 15, 1967

Alfonso J. Zirpoli, United States District Judge.

[58] In the United States District Court, Northern District of California

No. 46568

[Title omitted]

Petition for Certificate of Probable Cause—Filed June 15, 1967

Respondent, acting by the Attorney General of the State of California, hereby petitions for a certificate of probable cause in order that he may appeal to the United States Court of Appeals for the Ninth Circuit from the final order of this Court granting a petition for writ of habeas corpus entered in this action on June 5, 1967.

The People of the State of California respectfully urge that the certificate of probable cause be granted so that the Court of Appeals for the Ninth Circuit may review the decision of this Court holding that petitioner was denied a federal constitutional right by the failure of the State of California to provide him a free transcript of trial which he may desire to use for the preparation of a petition for writ of habeas corpus. The question is admittedly one of [59] first impression in this Court.

The People of the State of California present this petition to this Honorable Court as required by Title 28, United States Code section 2253.

Dated: June 14, 1967

Thomas C. Lynch, Attorney General of the State of California. Robert R. Granucci, Deputy Attorney General. Karl S. Mayer, Deputy Attorney General, Attorneys for Respondent.

---

[60] Affidavit Omitted in printing.

---

[61] Statement of Service by Mail Omitted in printing.

[62-65] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

No. 46568

[Title omitted]

CERTIFICATE OF PROBABLE CAUSE—June 15, 1967

Pursuant to Title 28, United States Code section 2253, the Court hereby certifies that there is probable cause for an appeal in the above-entitled case.

Dated: June 15, 1967.

Alfonso J. Zirpoli, United States District Judge.

[66] IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 22,040

LAWRENCE E. WILSON, Warden, Appellant,

vs.

WILLIE WADE, JR., Appellee.

OPINION—March 11, 1968

Appeal from the United States District Court for the Northern District of California

Before POPE, DUNIWAY and CARTER, Circuit Judges.

POPE, Circuit Judge.

The appellee Wade is a California state prisoner who in November, 1960, was found guilty of murder in the first degree and was sentenced to life imprisonment. He appealed his sentence to the District Court of Appeal where his conviction was affirmed on April 17, 1961. In May, 1966, he made an application to the same District Court of Appeal which he describes as one "for the issuance of records". On July 21, 1966, he filed in the State Supreme Court a petition for writ of habeas corpus. His application in the District Court of Appeal, he says, was denied without filing and his petition for habeas corpus in the State Supreme Court was denied without opinion. Thereafter and on February 16, 1967, he filed in the court below a petition for writ of habeas corpus. In that petition he stated that the ground for it was "that I am being denied due process and equal protection of the law by the State of California by the illegal retrainment [sic] of my trial records." It was shown that at all times here mentioned he was indigent and without funds or means of paying for the copying of the transcript of the proceedings at his trial and he was permitted to file his action in forma pauperis.

[67] It appears that when Wade took his original appeal from his conviction he was represented by appointed counsel. At that time one Pollard was a co-defendant and a copy of the transcript was allegedly furnished to Pollard. California Rules of Court, (35(c), 10(c)), provide that every person convicted of crime is entitled to a free transcript of

the proceedings for purposes of appeal. It is provided that where two or more defendants are convicted in the same case and the judgment of death is not rendered, one free copy is made available to the defendants to share.

The court below granted Wade's petition for a writ of habeas corpus and in doing so recited the circumstances relating to the availability of a transcript at the time of the appeal and since then, as follows: "It appears that petitioner's attorney used the original transcript borrowed temporarily from the court to prepare his brief, but that petitioner did not receive a copy of the transcript. Petitioner's co-defendant, one Joe Lewis Pollard, allegedly received a copy of the transcript and still has it in his possession. Petitioner apparently does not have access to Pollard's copy of the transcript, and he further alleges that there is presently a conflict of interest between them."

There is no doubt but that an indigent state prisoner is entitled to a free transcript for use in an appeal from his state conviction where that is needed and that he has a like right to a free transcript in order to prosecute a claim for post conviction relief where that is essential in order to permit him to demonstrate his right to such relief. See the cases cited in Roberts v. La Vallee, 389 U.S. 40, 42.2 But the question here is whether Wade has presented any grounds for post conviction relief, the prosecution of which might require him to have the use of a trial transcript.

This court dealt with this situation in McGarry v. Fogliani, 370 F. 2d 42, 44, where we said respecting that appellant: "He makes no showing whatever that any prejudicial errors occurred that would have called for a reversal of his conviction. There is nothing in the claim that the sentencing judge refused to allow an appeal from the conviction before appellant was sentenced. The right to appeal attached when appellant was sentenced. Nor is the court required to order a copy of appellant's trial transcript merely to enable appellant to 'comb the record in the hope of discovering some flaw.' "

[68] In the case before us the trial court failed to find that Wade was claiming that there was any error which occurred in the proceedings which led to his conviction which would warrant the granting of post-conviction relief.

So far as the district court's findings are concerned, our

holding in McGarry v. Fogliani, supra, would require us to say that Wade was not entitled to demand a transcript merely to enable him to comb the record in the hope of discovering some flaw.[1] The judgment must be reversed.[2]

It is so ordered.

---

[1]Such authority as is available is in accord with what was stated in McGarry, see footnote 7, where the court cites United States v. Glass, 4th cir., 317 F. 2d 200, 202. Although the language there is in accord with the McGarry decision, under the circumstances of that case it may be dictum. Two other cases suggest the same rule: Ketcherside v. U. S., 6 cir., 317 F. 2d 807, 808, and Taylor v. United States, 9 cir., 238 F. 2d 409, 411, although both these two cases were primarily concerned with a construction of a federal statute relating to providing a transcript at government expense.

[2]Wade not only completed a commonly used prepared form of petition for habeas corpus, but he added to it a typewritten petition for the writ stating in general the same matters we have previously mentioned with an additional recital. After describing his sentence and life imprisonment, he continued: "Thereafter petitioner appealed to the district court of appeal of the State of California, Second Appellate District, in case No. 7496. The Appellate Court affirmed the conviction of the Superior Court of Los Angeles County, on August 17, 1961, and relieved the court appointed counsel on his own request." The last quoted paragraph would suggest to us that the circumstances under which his court appointed counsel was relieved of representation of Wade may well have been contrary to the rules laid down in Anders v. California, 386 U.S. 738.

The quoted allegation is wholly insufficient to demonstrate that Wade had been deprived of the rights which were recognized in the Anders case; but the petition would be susceptible to amendment were he given an opportunity to amend. However, a careful examination of the record discloses that he has never made any such point in his petitions in the state courts. In short, he had not exhausted his remedies available in the state courts as required by Title 28 §2254. We assume that if it is possible to make a case under the rule of Anders v. California, supra, nothing would prevent him from making such a claim hereafter for this judgment is not res judicata. Fay v. Noia, 372 U.S. 391, 423.

[69] IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 22040

LAWRENCE E. WILSON, Warden, Appellant.

vs.

WILLIE WADE, JR., Appellee.

JUDGMENT—Filed and entered March 11, 1968.

Appeal from the United States District Court for the Northern District of California.

This Cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed.

[70] IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Before: POPE, DUNIWAY and CARTER, Circuit Judges.

ORDER DENYING PETITION FOR REHEARING—May 3, 1968.

On consideration thereof, and by direction of the Court, It Is Ordered that the petition of Appellant filed April 8, 1968 and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is denied.

[71-72] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1968

No. 409 Misc.

WILLIE WADE, JR., Petitioner,

v.

LAWRENCE E. WILSON, WARDEN, et al.

On petition for writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—February 24, 1969

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1084 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1969—351 295/703